

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

EVELYN RAMÍREZ-LLUVERAS;  
JANITZA CÁCERES; MC and MAC,  
represented in this action by  
their mother Evelyn Ramírez-Lliveras

Plaintiffs

v.

JAVIER PAGÁN CRUZ; CARLOS SUSTACHE  
SUSTACHE; ZULMA DÍAZ; EDWIN RIVERA  
MERCED; MIGUEL VÁZQUEZ SAN ANTONIO;  
et al.

Defendants

CIVIL NO. 08-1486  
(RLA)

**CONTINUATION VIA TELEPHONE  
DEPOSITION OF ALEJANDRO DEL CARMEN, PH.D.**

DATE: Monday, August 23, 2010

TIME: 9:00 a.m.

PLACE: Berkan/Méndez Law Office  
G-11 O'Neill Street  
Hato Rey, Puerto Rico

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

288

**A P P E A R A N C E S**

**DEPONENT:**

ALEJANDRO DEL CARMEN, Ph.D.  
(Via telephone from Arlington, Texas)

**ATTORNEYS FOR PLAINTIFFS:**

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MARY JO MÉNDEZ, ESQ. and  
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EDWIN RIVERA MERCED:**

MICHAEL CRAIG McCALL, ESQ.  
Via telephone from the law offices of  
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**COURT REPORTER:**

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NRM Bilingual Reporting  
908 Harvard Street  
University Gardens  
San Juan, PR 00927

**ALSO PRESENT:**

MS. SURIMA QUIÑONES (Law student)

P R O C E E D I N G S

MS. BERKAN: Good morning everybody. We're here on the record in San Juan, Puerto Rico and in Grand Prairie or Arlington, Texas for the continuation of the deposition of defense expert del Carmen, Alex del Carmen or Alejandro del Carmen. For the purpose of the record, I'm Judith Berkan. I'm accompanied by Mary Jo Méndez and José Guillermo Pérez.

The court reporter here in San Juan is Nelly Rivera. I will take her oath, upon agreement of counsel. Dr. del Carmen will remain under the oath that was administered to him on August 12<sup>th</sup>.

All of the stipulations remain as they were at the beginning of the previous deposition. So I will proceed. Mr. McCall is at his office, I assume, in Guaynabo.

MR. McCALL: That is correct, attorney Berkan.

MS. BERKAN: So I will proceed...

MR. McCALL: Attorney Cardona my join us, but he is not present here. I'm just letting you know in advance.

MS. BERKAN: No problem, no problem. I will take the oath of Nelly Rivera. Do you swear to faithfully transcribe everything that's said in the course of the deposition today?

1 REPORTER: I do.

2 MS. BERKAN: Okay. And we'll make an arrangement  
3 with Ms. Rivera to... once we get the transcript, the  
4 final transcript from the other court reporter, Ms.  
5 Sturgess in Texas, we will ask Ms. Rivera to begin her  
6 enumeration of the pages, starting with the page after  
7 the final page, so we don't have repeats of pages. All  
8 right, Dr. del Carmen, good morning again.

9 DEPONENT: Good morning, Ms. Berkan. How are you,  
10 ma'am?

11 MS. BERKAN: How are you? We received on Friday a  
12 number of documents which were forwarded to us by Mr.  
13 McCall. They included documents which we have  
14 previously provided to Mr. McCall in such areas as  
15 Javier Pagán's personnel record, the impact service,  
16 things like that, the general orders, that were made  
17 reference to in the previous deposition. Were those the  
18 documents that you reviewed? Have you seen the list  
19 that I sent to Mr. McCall?

20 DEPONENT: Yes, ma'am. I went to... on Monday of  
21 the week that followed the deposition I went to a local  
22 Kinkos and FedEx place and I had them make copies and  
23 sent them on to Mr. McCall of all the exhibits that you  
24 requested that I send him.

25 MS. BERKAN: Fantastic. These...

1           DEPONENT: One thing that I noticed is that  
2           apparently on some of the back pages, 'cause there were  
3           double... they were copied on both sides, on the back  
4           page of some of the documents were not copied.

5           MS. BERKAN: All right. So some of them were all  
6           evens or all odds? We should understand that the page  
7           in between you did actually review?

8           DEPONENT: Yes, ma'am, in the cases where the  
9           copies were made on both sides.

10          MS. BERKAN: All right. And, Mr. McCall, those are  
11          the documents that were forwarded to us through  
12          Doubleday?

13          MR. McCALL: Yes, Ms. Berkan, the ones I received  
14          from him. And then at some point thereafter, reviewing  
15          it, we realized that certain documents, some of the  
16          orders, for example, appear to be just all odds or all  
17          evens. And I confirmed with Dr. del Carmen that the  
18          ones that had been sent to him did have all pages of  
19          them, but they were copied front and back.

20          MS. BERKAN: Okay. All right.

21          MR. McCALL: And when Kinkos copied them they  
22          missed it.

23          MS. BERKAN: All right, fine.

24          MR. McCALL: But [UNINTELLIGIBLE] copies of those  
25          we can. But I'll represent... he's represented to me

1           that the originals... the copy that he had did have the  
2           full copy.

3           MS. BERKAN: No problem. In addition to those  
4           documents, we received a number of other documents  
5           which we will mark as the next exhibit in line. I don't  
6           know which one it is, but it will be the only exhibit  
7           to this deposition. We'll get the number in a minute.  
8           But the pages that we received additionally were a one-  
9           page document about... with time sheets from August 4<sup>th</sup>  
10          to August 11<sup>th</sup>; a one-page document from Joseph (Sib)  
11          Abraham; a one-page document from the website of Del  
12          Carmen Consulting that begins with the words in the  
13          text "Staff Analysis"; a copy of a July 7, 2010 letter  
14          from Dr. del Carmen to Sib Abraham; and a... about five  
15          or six-page... I may have it... off a minute. There's  
16          two more, actually. There's about five or six pages for  
17          course number CRCJ 5319, Issues in Policing, Spring  
18          2010, Dr. del Carmen, Monday/Wednesday, 4:00 to 6:00  
19          p.m. And, finally, a copy of the doctorate in  
20          philosophy in criminology, Alejandro del Carmen, given  
21          at Tallahassee, Florida, in August of 1997. So I'll  
22          mark those all as **EXHIBIT...**

23                 MS. MÉNDEZ: 7.

24                 REPORTER: 7.

25                 MS. BERKAN: ...7.

1 MR. McCALL: Ms. Berkan, just before we go further,  
2 I just want to confirm that you've started the  
3 questioning, but I'm assuming that all stipulations  
4 we've entered into previously will govern this  
5 continuation as well.

6 MS. BERKAN: I said that, Mr. McCall. If you had  
7 listened, I said that previously. I do not want to  
8 waste my time on repeating things.

9 MR. McCALL: Another point that I want to bring up  
10 to you before we go forward and that is, pursuant to  
11 the court order, docket 165, issued on August 5<sup>th</sup>, this  
12 deposition is not to extend beyond seven hours of  
13 testimony taken. My understanding is we started at 9:00  
14 a.m. in Texas; we went till 4:15; we took a break of  
15 not more than an hour. We've had six hours and fifteen  
16 minutes of...

17 MS. MÉNDEZ: No, I wrote down the time.

18 MS. BERKAN: That's...

19 MR. McCALL: I'm assuming that not more than an  
20 hour...

21 MS. BERKAN: That is not true. We will address that  
22 if I need to beyond that. We have a listing of the  
23 exact amount of time we have spent and this is the  
24 first notice of that, and you have consistently said it  
25 would be from 9:00 to 1:00... I mean to...

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

294

1 MS. MÉNDEZ: To... to 11:00

2 MS. BERKAN: Sorry, 9:00 to 11:00.

3 MR. McCALL: I have never done that. You...

4 MS. BERKAN: All right, you're wasting time right  
5 now. It is 9:08. We will get you an exact listing of  
6 the time. I want to get to my deposition. Will you  
7 allow me to start my deposition, Mr. McCall?

8 MR. McCALL: Yes. And at 10:08, it's our position  
9 that the deposition will be over, pursuant to the court  
10 order.

11 MS. BERKAN: And I will continue to ask questions.  
12 We will get the exact time that we have spent. We keep  
13 an exact record. We don't do casual records; we keep an  
14 exact record. Okay, but let us continue.

15 **CONTINUATION OF DIRECT EXAMINATION OF ALEJANDRO DEL CARMEN**  
16 **BY JUDITH BERKAN, ESQ.**

17 Q. Dr. del Carmen, have you reviewed any additional  
18 documents since your last deposition?

19 A. No, ma'am.

20 Q. All right. Have you read 87-14 since your last  
21 deposition?

22 A. I did go through it, ma'am, and several other  
23 uh... I did not review any additional uh...

24 Q. Okay.

25 A. ...but I reviewed some of the existing general



1 orders that you highlighted to me in the previous  
2 deposition.

3 Q. Besides 87-14 what else did you review?

4 A. Just some of the general depositions that were in  
5 one of the exhibits that I sent you, ma'am. I don't remember  
6 exactly the number.

7 Q. Did you take any notes?

8 A. No, ma'am, I did not.

9 Q. All right. And your testimony is that throughout  
10 your work on this case you have taken no notes?

11 A. That is correct, ma'am.

12 Q. After the last deposition day, did you change any  
13 of your opinions?

14 A. No, ma'am.

15 Q. Did you find the reference as to there being  
16 training every three years?

17 A. Yes, ma'am, I went back and I looked at the  
18 document that I had reviewed and one of the... what I found  
19 is on page 178 of Mr. Toledo's deposition there is a...  
20 under... there are some statements relevant to a training  
21 cycle that he had instituted on his... as per your questions  
22 to him, on the last uh... I think it was on the last tenure  
23 or the last cycle of his tenure as Superintendent.

24 Q. And this is in his deposition of what date?

25 A. Give me one second. Let me pull that out real

1 quick. It is dated Friday, April 24<sup>th</sup> of 2010.

2 Q. April 24<sup>th</sup>? Just a moment.

3 [PAUSE]

4 Q. I'm sorry, the deposition is dated what date?

5 A. It is on Friday, April 24<sup>th</sup>, 2010.

6 MS. BERKAN: Just a moment.

7 [PAUSE]

8 Q. All right. Since the last deposition, how many  
9 hours have you spent on this case?

10 A. Maybe about another five hours. I haven't... I  
11 haven't totaled the number of hours that I've spent on it.  
12 I've been sick, running a fever, and so I haven't really,  
13 you know, had a time to go back and verify that.

14 Q. Sir, you're referring to Toledo's testimony at  
15 178, which says, and I quote: "One of the things I did..."  
16 (I'm eliminating language which doesn't go to the issue)  
17 "...was retraining of officers. I believe it's every two or  
18 three years retraining. The officers have to go to the  
19 Academy, I think, for a two-week training, retraining in  
20 order to refresh, you know, in all those aspects." Is that  
21 what you're referring to?

22 A. Yes, ma'am.

23 Q. All right. Do you know if that was done with  
24 respect to Mr. Pagán?

25 A. I do not, but I understood that his last uh... his

1 last tenure was during the time that Mr. Pagán was still an  
2 officer.

3 Q. Do you know how long his last tenure was?

4 A. I think it was four years, but I can't... I can't  
5 really recall that.

6 Q. Would it surprise you to know it was eight years  
7 and it ran from two thousand and... 2001 to 2009?

8 A. Yes, ma'am, that's... that's correct, I'm sure.

9 Q. So it's eight years. Now, do you know if that was  
10 instituted in... No, I'm sorry, I'm being told...

11 MR. McCALL: What did you say, Judith?

12 MS. BERKAN: I'm sorry, I'm wrong...

13 MR. McCALL: 2001 to 2009?

14 MS. MÉNDEZ: [UNINTELLIGIBLE]

15 MR. McCALL: I don't think that's accurate. I mean,  
16 the record will show the time he was there. He was  
17 there for the full Rosselló and for one other term.

18 MS. BERKAN: Rosselló? I'm sorry...

19 MS. MÉNDEZ: [UNINTELLIGIBLE]

20 MR. McCALL: Yeah, for eight years of Rosselló and  
21 four years after that, it's my understanding; not eight  
22 years after that.

23 MS. BERKAN: All right, he was there... You're  
24 absolutely right. I stand corrected. It was 2005 to  
25 2009. Correct?

1 MR. McCALL: I believe so.

2 MS. BERKAN CONTINUES:

3 Q. Now, do you know when this order for retraining  
4 every two to three years came down, that he thinks he made?

5 A. No, ma'am, I do not.

6 Q. Have you seen the order?

7 A. I don't think I have.

8 Q. Do you know if each of the fifteen or seventeen  
9 thousand police officers in the PRPD were subject to that  
10 order?

11 A. I believe that the... that the... as part of the  
12 testimony that he indicated on that particular page, either  
13 you or he made reference to the number of officers that were  
14 in the Police Department at the time. And I think it was  
15 alluded that... by him to you, that given the large volume  
16 of police officers that were at the Police Department at the  
17 time that they had to do it every so often because of the  
18 large volume.

19 Q. All right. So it would be fair to say that you  
20 have no idea if Mr. Pagán in fact went to that retraining?

21 A. That is correct. I do not have any... any evidence  
22 that suggests that he underwent that training.

23 Q. Okay. So you want to correct your report?

24 A. I will make the modifications, yes, ma'am.

25 Q. All right. Does that change your opinion as to the

1 adequacy of his training or the fact that the supervisor  
2 should have relied on his training?

3 A. No, ma'am, it does not.

4 Q. Okay. Now, your time sheets, such as we received,  
5 do not have any detail. Is that how you invoice usually?

6 A. Yes, ma'am. Typically I just write down the time  
7 that I've spent on certain documents and then I send that  
8 time sheet relevant to that. I don't specifically keep track  
9 of what document I reviewed when, unless I am asked. And I  
10 haven't been requested that.

11 Q. According to your contract with the Aldarondo law  
12 firm it is okay for you not to specify what you spend time  
13 on?

14 A. Ma'am, I read the contract to keep track of the  
15 time. I did not read it...

16 Q. Okay.

17 A. ...as to the specific items that I was reviewing.  
18 But I'm fairly certain that I may have something that may  
19 suggest as to what document I have reviewed at that time.

20 Q. Well, what would the thing that you're fairly  
21 certain that you have that may suggest might be?

22 A. Well, I keep notes as to, you know, my schedule.  
23 And so I... but I would have to go back and see if I have  
24 something to that effect.

25 MS. BERKAN: Well, if you find anything to that

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

300

1 effect, that would give us a little more light as to  
2 what exactly it is that you spent time on, I would  
3 appreciate it.

4 DEPONENT: Yes, ma'am.

5 Q. Now, do you have any estimate of how many hours  
6 you spent on the first \$43,000 worth of payment?

7 A. You know, ma'am, I don't. As we had discussed on  
8 the 12<sup>th</sup>, I did not keep track of specifics on terms of  
9 time. We uh... You know, my understanding was a flat rate  
10 and that given that, you know, time was uh... almost pretty  
11 much irrelevant as to how much time I have spent on  
12 different items.

13 Q. Okay. How did you come up with the number forty-  
14 three thousand?

15 MR. McCALL: Attorney Cardona has joined us, Ms.  
16 Berkan.

17 MS. BERKAN: Fine. I'm...

18 MR. CARDONA: Good morning.

19 MS. BERKAN: Good morning, Mr. Cardona.

20 MS. BERKAN CONTINUES:

21 Q. How did you come up with the number forty-three  
22 thousand?

23 A. When we actually discussed the fees initially, Mr.  
24 McCall had suggested to me or presented to me that there  
25 were going to be, you know, over 8,000 pages for me to

1 review and that I had essentially about a month to do so in  
2 order to produce a report. And so, by virtue of that, I went  
3 ahead and provided him an estimate of how many hours, you  
4 know, I thought it would be to go over 8,000 pages and also  
5 write a report. And so once I gave him that estimate, he  
6 asked me to give him two... you know, essentially two  
7 scenarios. One that would be based on the number of hours  
8 that I would spend on the documents and reading them and  
9 writing the report and the other...

10 Q. Yeah, I know that part.

11 A. ...scenario would be one that would have a flat  
12 fee.

13 Q. Okay. The flat fee was... how many hours did you  
14 think it would take?

15 A. You know, I don't recall offhand but I... but,  
16 obviously, it was \$250.00 an hour, you know, divided by the  
17 number of hours that it took me to review that. So that  
18 would surmount the forty-three thousand.

19 Q. Okay. But... So the fact that you charged  
20 considerably less in your other cases is because you've  
21 spent less time?

22 A. Well, part of it was because of the brevity of the  
23 time in which I was going to have this done. Secondly, it  
24 was because of the amount of time that I was going to invest  
25 reading every single transcript as well as going over the

1 exhibits and being able to write the report. You know, it...  
2 You know, my previous history in doing these types of works  
3 relate to the notion that it takes a considerable amount of  
4 time to go through every deposition, to read it, to think  
5 about it, to reflect on it and to move on to the next one.  
6 So I gave them the two scenarios based on what I at the time  
7 thought it would be in terms of the total amount of time  
8 spent on them.

9 Q. Now, the transcripts of the trial, did you use  
10 them for anything in your report?

11 A. I read them to understand, you know, exactly what  
12 had happened with Mr. Pagán and so... and those were the  
13 first batch of documents that were produced to me. So I  
14 spent a considerable amount of time going through all of  
15 them, yes, ma'am. But I did not... I did not... I used them  
16 in the context of understanding what had happened on August  
17 the 11<sup>th</sup>, but I did not make any reference to them, except  
18 in those instances where I actually cite the testimony that  
19 was given by different witnesses at the time of trial  
20 regarding Mr. Pagán.

21 Q. Okay. I'd like to go to the document that you sent  
22 to us that says... that's from your website.

23 A. Yes, ma'am.

24 Q. And where it says "...specializes in use of force  
25 analysis", what does that mean? Second uh... Second



1 subsection, "Use of Force Studies".

2 A. Okay. That means that I have done some studies on  
3 use of force in the past and I have reviewed use of force  
4 data with other police departments.

5 Q. That's on a level of statistical studies or  
6 analysis of patterns?

7 A. Yes, ma'am, I have... When I started engaging in  
8 research at the University of Texas at Arlington twelve  
9 years ago, I started working on a part-time basis for the  
10 Arlington Police Department as a consultant. At the time,  
11 the Chief of Police in Arlington was Chief Concord. That was  
12 soon transitioned to Chief Bowman, who is the Chief of  
13 Police today.

14 Q. All right, I don't need names. What I need is what  
15 you did.

16 A. I understand that. I'm trying to put it in context  
17 for you.

18 Q. I appreciate that but...

19 A. Working for them, they asked me in two or three  
20 instances to review their use of force data and to provide a  
21 statistical analysis as to the use of force that was used  
22 and the levels of resistance that had been made on that  
23 particular issue.

24 Q. Is this in the context of racial profiling?

25 A. Ma'am?

1 Q. Is this in the context of racial profiling?

2 A. No, ma'am, this is strictly use of force.

3 Q. All right. And what statistics were available,  
4 what kinds of statistics?

5 A. The Police Department kept up with data as to when  
6 a police officer, for instance, would remove the gun from  
7 his or her holster. Then that would... they would have to  
8 fill out a use of force report. And that use of force report  
9 and that data that was made available to me was the data  
10 that I analyzed.

11 Q. Okay. And is the preparation of use of force  
12 reports of this nature consistent with best practices?

13 A. I'm sorry, I didn't understand that question.

14 Q. Is the preparation by a police department of use  
15 of force of this kind of... of this nature consistent with  
16 best practices?

17 A. Yes, ma'am, it is.

18 Q. Is it required by best practices?

19 A. In some police departments it is, yes, ma'am.

20 Q. And would you have been able to have done the  
21 analysis... Would you have been able to do the analysis of  
22 patterns or anything with regard to the use of force in the  
23 Arlington Police Department without this data?

24 A. It would have been very difficult. You know, one  
25 of the things that we looked at was the level of resistance

1 that was posed by another individual when facing off the  
2 officer and what level of resistance the officer would have  
3 towards that individual.

4 Q. And this is a department of about how many? I'm  
5 sorry, I know we went into this last...

6 A. Yeah. The Department has about 550 police officers  
7 now, and that's an estimate on my end.

8 Q. And about how many use of force incidents per year  
9 were there in that department?

10 A. I don't recall off hand, Ms. Berkan. But back then  
11 probably less than 50 a year. And that's, again, an estimate  
12 on my end.

13 Q. Okay. Now, can you tell me what you understand the  
14 role of the Police Superintendent to be in Puerto Rico?

15 A. The role of Superintendent is to simply be the  
16 chief administrator of the Police Department, where pretty  
17 much all the organizational mandates are subscribed from.  
18 This individual is the one that sets the tone for the Police  
19 Department and is also the individual that oversees pretty  
20 much all the police officers that work for Puerto Rico.

21 Q. Have you looked at the statutory references with  
22 respect to the role of the Superintendent?

23 A. I have not, ma'am.

24 Q. Do you know what role Mr. Toledo had in setting  
25 forth the standards for the investigative processes in

1 Puerto Rico?

2 A. My understanding from his deposition was that  
3 he... there was a legislative mandate that required for an  
4 Auxiliary Superintendent to be in place as a result of the  
5 number of complaints that were filed and the large volume,  
6 and the fact that the Superintendent's Office was  
7 overwhelmed with those complaints and so...

8 Q. Yeah, we went into that. I'm going to...

9 A. [UNINTELLIGIBLE] ...to authorize for an Auxiliary  
10 Superintendent and the different other departments that are  
11 in place that investigate and provide a resolution as to the  
12 complaints that are filed against the officers.

13 Q. Is that the only role of the Auxiliary  
14 Superintendent, according to your knowledge?

15 A. No, ma'am, that is not.

16 Q. Okay. And do you know how long it has been that  
17 there has been a Superintendency or, you know, that's how  
18 it's called here, a Superintendency to deal with  
19 administrative complaints? Do you know how long that's been  
20 in existence in Puerto Rico?

21 A. I do not, ma'am.

22 Q. Do you know if there have ever been changes  
23 through general or special orders concerning the nature or  
24 functions of the Superintendency, which has had different  
25 names at different times but that is dealing with

1 administrative complaints in Puerto Rico?

2 A. I do not, ma'am, but I believe in his testimony he  
3 alluded to the fact that there had been several changes  
4 prior to his arrival, if I'm not mistaken.

5 Q. And you saw his testimony that 87-14 remains in  
6 effect?

7 A. Yes, ma'am.

8 Q. And 87-14 requires superior officers or  
9 supervisors to review the administrative complaints files of  
10 their supervisees, correct?

11 A. Yes, ma'am.

12 Q. All right. Do you know if Victor Cruz ever did  
13 that?

14 A. I do not believe he did.

15 Q. Do you know if Rafael Figueroa Solís ever did  
16 that?

17 A. I don't believe so. I believe that it was Sergeant  
18 Figueroa who claimed in his testimony that he did not have  
19 access to that.

20 Q. Didn't Colón Báez also claim that?

21 A. I believe so, yes, ma'am.

22 Q. All right. And if they made that claim, they  
23 either didn't know about or chose not to follow 87-14,  
24 right?

25 A. I believe that they claimed in their testimony

1     that they did not have access to the... to that information.  
2     I'm not sure that they said that they chose not to follow  
3     that.

4           Q.     Well, you know that 87-14 says they have to look  
5     at it?

6           A.     Yes, ma'am.

7           Q.     All right. Do you know if they ever tried to look  
8     at it?

9           A.     That part I don't know, no, ma'am.

10          Q.     Do you know if Victor Cruz ever supervised Mr.  
11     Pagán?

12          A.     Did Mr. Cruz ever supervise Mr. Pagán?

13          Q.     Uh-huh.

14          A.     I believe he did at some point, yes, ma'am.

15          Q.     Do you know if he signed an evaluation of him on  
16     the six months period when he was out for two months on  
17     suspension?

18          A.     Yeah, that's right. Now you're reminding me of  
19     this. He did evaluate Mr. Pagán at the time, yes, ma'am.

20          Q.     You would agree with me that Victor Cruz, Rafael  
21     Figueroa and Colón Báez at different times in the year prior  
22     to the incident had direct supervisory responsibility over  
23     Javier Pagán?

24          A.     I believe that's correct, yes, ma'am.

25          Q.     Do you think it was appropriate that Javier Pagán,

1 after a 60-day suspension, immediately was put out on the  
2 streets?

3 A. My understanding of this was that he was... that  
4 this was a process by which none of the immediate  
5 supervisors had any hearsay as to where he was going to be  
6 placed.

7 Q. I'm sorry, sir. Within Tactical Operations there  
8 are different functions, aren't there?

9 A. Yes, ma'am.

10 Q. And within... Obviously... Well, let me ask... Let  
11 me backtrack. If they didn't have the authority to decide  
12 where he's going to be placed, you'd agree with me that  
13 Rivera Merced had the authority within the Area where to  
14 place him, correct?

15 MR. McCALL: Objection to the form of the question  
16 in that...

17 MS. BERKAN: Okay.

18 MR. McCALL: ...it doesn't specify a specific time  
19 that...

20 MS. BERKAN: Fine, fine. At the time that he  
21 returned from his...

22 MR. McCALL: ...he had direct supervisory authority  
23 over Mr. Pagán.

24 MS. BERKAN: Fine.

25

1 MS. BERKAN CONTINUES:

2 Q. At the time that Mr. Pagán returned from his 60-  
3 day suspension, you would agree with me that the person who  
4 had the authority as to where to place him within the  
5 Humacao Area was the Area Commander, Edwin Rivera Merced?

6 A. Yes, ma'am.

7 Q. All right. Assuming that Edwin Rivera Merced sent  
8 him back to Tactical Operations, do you have any problems  
9 with that? Do you think that that presented any difficulties  
10 in terms of his compliance with his responsibilities?

11 A. Can you say that last part of the sentence.

12 Q. All right, I'm sorry. Do you think it was  
13 appropriate or consistent with best practices for the Area  
14 Commander to send Mr. Pagán back to Tactical Operations upon  
15 the completion of the 60-day suspension?

16 A. Within the best practices practical model, no,  
17 ma'am.

18 Q. And once he goes to Tactical Operations, he...  
19 they... what happens here (and I will represent to you that  
20 in different moments of that first... those first seven-  
21 eight months back from the suspension Victor Cruz, Rafael  
22 Figueroa and Colón Báez were supervising Mr. Pagán  
23 directly)...

24 MR. McCALL: Objection to the form that you're  
25 introducing into evidence stuff not there. If you want



1 to do it as a hypothetical...

2 MS. BERKAN: I will do it as a hypothetical.

3 MS. BERKAN CONTINUES:

4 Q. Assume those facts, which are supported by the  
5 record, but just assume them, that at different points in  
6 time, do you believe that Victor Cruz, Rafael Figueroa  
7 and/or Colón Báez had the authority to choose what tasks,  
8 specific tasks within Tactical Operations he would be  
9 assigned to?

10 A. Okay, I'm assuming that these three individuals  
11 what? Say that last part again, please.

12 Q. Assume that these three individual defendants at  
13 different times in the last ten months or nine months  
14 after... between Mr. Pagán's return from his suspension  
15 until he killed Mr. Cáceres, that at different times in that  
16 period they had direct supervisory authority over him as a  
17 Tactical Operations agent within Humacao. Assume those  
18 facts. Would you say that they had the authority to place  
19 him in positions within Tactical Operations where he would  
20 not have direct contact with the public?

21 A. Yes, ma'am.

22 Q. Do you believe that it was best practices of these  
23 people, assuming that they had no authority... Assume all  
24 the facts I've told you, but assume that they had no  
25 authority to decide whether or not he went to Tactical

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

312

1 Operations, would it have been consistent with best  
2 practices to ease him into Tactical Operations by assigning  
3 him desk jobs for a period to evaluate him upon his return?

4 MR. McCALL: When you use the phrase "Tactical  
5 Operations", what are you referring to specifically...

6 MS. BERKAN: Oh, *'¡por favor!'*

7 MR. McCALL: ..."Tactical Operations"?

8 MS. BERKAN: All right, that's obstructive. You  
9 know what Tactical Operations is. It's a unit within  
10 Humacao. You want me to repeat it each time? When I say  
11 the words "Tactical Operations" what I mean is Humacao  
12 Tactical Operations Unit. Okay? Would you answer the  
13 question.

14 A. Yes, ma'am. I think that the... the... if they  
15 would have had reason to... you know, to question whether or  
16 not officer Pagán would have been a threat to society or  
17 would have been... or would have posed a particular, you  
18 know, a disposition that would have been out of... you know,  
19 aggressive or... or that would have lead him to...  
20 obviously, somebody's death, they should have, you know,  
21 regarded him as someone who perhaps should have, as you say,  
22 eased his way into... into a Tactical Operation Unit that  
23 would have had contact with the public.

24 Q. And what kind of information would give him...  
25 would give those supervisors information which would allow

1   them to conclude or have reason to believe that he might be  
2   a threat?

3           A.   That... that... What you just asked, Ms. Berkan,  
4   is the million dollar question in policing, you know, when  
5   it comes to management and supervisory roles of individuals.  
6   And what I mean by that is, you know, typically police  
7   departments have to depict, you know, what types of  
8   behaviors are behaviors that are... I don't want to use the  
9   word "allowed", behaviors that are within the parameters,  
10   you know, of acceptance. Even in the early warning systems  
11   that they have in place that you and I discussed on the 12<sup>th</sup>  
12   of August in my deposition then, they still insert the  
13   parameters that police departments should adhere to that may  
14   be predictors of that officer engaging in violence in the  
15   future or perhaps, you know, committing suicide or, you  
16   know, engaging in alcoholism and all of that. So, you know,  
17   they would have had to decide what those parameters are and  
18   when to pull that officer aside and provide, you know,  
19   counseling or provide some sort of a special treatment for  
20   this individual.

21          Q.   All right. Do you think... Do you know if Mr.  
22   Pagán had any complaints alleging aggressive behavior other  
23   than the domestic violence complaint pending in the last two  
24   years of his tenure in the Police Department?

25          A.   Yes, ma'am, at our last deposition you highlighted

1 to me several exhibits that showed Mr. Pagán's other  
2 disciplinary issues.

3 Q. You'd agree with me that past behavior is the best  
4 predictor of future behavior?

5 A. Generally, yes, ma'am.

6 Q. And if you look at past behavior and evaluate the  
7 allegations citizens are making as to aggressive behavior,  
8 that that could raise a red flag?

9 A. If the previous behavior is suggestive that an  
10 officer is going to... Well, let me backtrack a little bit  
11 and tell you. If the previous behavior is suggestive that a  
12 police officer is going to, you know, represent a threat to  
13 society, within the best practices model police officers are  
14 either terminated or they're asked to step down. Because no  
15 police department wants to have a police officer that  
16 basically would be... or would pose a threat to fellow  
17 citizens. The... the... But there are other behaviors that  
18 are not say lethal, that have not presented a causal pattern  
19 to a future behavior that could be, for instance, counseled  
20 or advised, where the officer would be referred to a  
21 different unit, where the officer would have limited contact  
22 with the public until that particular issue that is  
23 affecting the officer has been resolved and the threat has  
24 been minimized.

25 Q. Okay. You know that in the Puerto Rico Police

1 Department there is a general order about repetitive  
2 conduct? Have you seen that order?

3 A. Yes, ma'am, I believe there is a... there's a  
4 general order to that effect.

5 Q. And that imposes a requirement upon supervisors to  
6 identify officers who have repetitive conduct?

7 A. I believe you're right, yes, ma'am.

8 Q. Do you know if Pagán was ever sent for repetitive  
9 conduct retraining?

10 A. I don't believe so, no.

11 Q. You state in your report, at paragraph three... I  
12 don't have the exact page. Let me see if I can get the page.  
13 Paragraph three on page eight, I believe, that it is  
14 "unreasonable to assume that in the course of an  
15 investigation other officers would be aware of the  
16 particulars".

17 A. Okay, what page is that in?

18 Q. On paragraph three, on page 15.

19 A. Fifteen. Okay, hang on. Okay.

20 Q. When you're talking about Superintendent Toledo's  
21 testimony...

22 A. Okay, give me one second. Let me get to that. Yes,  
23 ma'am, go ahead.

24 Q. You say that it would be "unreasonable to  
25 assume..." I'm sorry, I'm on page... I'm on the...

1           A.    You're on page 15, number three, right?

2           Q.    Three, about six lines down.

3           A.    I see it, yes, ma'am, go ahead.

4           Q.    "Thus it would be unreasonable to assume that  
5 throughout the course of the investigation other officers  
6 and supervisors of the Puerto Rico Police Department would  
7 be made aware of the particulars regarding an accusation  
8 against an officer". Do you still stand by that?

9           A.    Typically... What is referenced there and what I  
10 mean by that typically in police departments that are in  
11 place, you know, throughout the United States, that  
12 particularly a size of the Puerto Rico Police Department  
13 with 15,000 police officers, it is extremely difficult to  
14 assume that every police supervisor will be fully aware,  
15 kept up to date with what the particular officers have done  
16 in terms of their past. Within the best practices model, you  
17 know, is that something that should happen? Absolutely.  
18 Should police officers become aware of what, you know, their  
19 constituents or their officers are doing... Strike that.  
20 Should police supervisors be aware of what their officers  
21 are doing? No question. But in a police department of 15,000  
22 individuals it is hard to fathom that a police supervisor  
23 would be made aware and would be aware of every single  
24 detail regarding every previous instance that an officer  
25 that reports to him or her...

1 Q. Well, you've seen '*Historiales*', haven't you? H-I-  
2 S-T-O-R-I-A-L-E-S. I realize we have a Spanish-speaking  
3 court report here. [LAUGH]

4 A. Right, we don't have that issue anymore.

5 Q. What's that?

6 A. Can you repeat that again, Ms. Berkan, I...

7 Q. All right, sorry. You've seen '*Historiales*'?

8 A. '*Historiales*', yes, ma'am.

9 Q. And they're included in every disciplinary file,  
10 right?

11 A. Yes, ma'am.

12 Q. And those have at least a brief statement of the  
13 previous complaints.

14 A. I believe that's right, yes, ma'am.

15 Q. And do you know how long it would take to read a  
16 page of '*Historiales*'?

17 A. Not very long, ma'am.

18 Q. All right. Do you know if any of the supervisors  
19 in this case read any of the '*Historiales*'?

20 A. I don't believe so.

21 Q. Do you know if according to 87-14 they're supposed  
22 to read the '*Historiales*'?

23 A. I believe that that's correct.

24 MS. BERKAN: All right. Just a moment, sir.

25 DEPONENT: Sure.

1 [PAUSE]

2 Q. On page 15, number three, you also indicate that:  
3 "Defendants' lack of..." -the same paragraph, but further  
4 down- "Defendants' lack of knowledge about the domestic  
5 violence incident serves as evidence that these types of  
6 matters and complaints are handled by the Legal Division,  
7 which does not communicate directly with supervisors while  
8 allegations are being investigated". Do you still stand by  
9 that statement?

10 A. Okay, let me find that paragraph again. You said  
11 it's at the bottom of number three?

12 Q. It's further on down. I think it's just about a  
13 couple of sentences down.

14 A. Okay, I see it, hang on. That it's the  
15 "defendants' lack of knowledge about the domestic violence  
16 incident related to officer Pagán serves as evidence that  
17 these types of matters and complaints are handled..." No, I  
18 would modify that, yes, ma'am.

19 Q. All right. How would you modify it and why?

20 A. I would say that the defendants' lack of knowledge  
21 about the domestic violence incident, you know, established  
22 in the presence of the general order that requires them to  
23 do that, you know, is a... it's a re... it's within the best  
24 practices model to have the supervisors read and become  
25 aware of all incidents relevant to an officer.



1 Q. Now, do you... At some point --and I'd have to find  
2 the reference-- but in some point in your report you say that  
3 87-14 is just a guidance, not a mandatory requirement?

4 A. I believe what I say about the general orders in  
5 general is that the general orders are typically... they  
6 provide guidelines. For instance, if a general order is in  
7 place to, you know, discipline an officer for, you know,  
8 I'll give you an example, engaging in racial profiling...

9 Q. No, I'm talking about 87-14.

10 A. I don't think eighty... I'm not sure that I made  
11 reference specifically to that but I may have. I don't  
12 recall. If you can find the page number, I will...

13 Q. I will, I will. I'll get it. We're looking for it  
14 because I know you did.

15 A. Sure.

16 MS. MÉNDEZ: [UNINTELLIGIBLE]

17 Q. Okay. Number 13 on page 11.

18 A. Okay, let me go to that page. Give me one second.

19 [PAUSE] Okay, go ahead, ma'am.

20 Q. You say: "Mr. Reiter makes..." When you're  
21 criticizing his report, you say that he makes reference to  
22 87-14 which, according to his interpretation, police  
23 supervisors are mandated to research and become aware of the  
24 disciplinary history of officers assigned to them. And then  
25 you go on to say that he fails to indicate that general

1 orders are generally meant to provide parameters and  
2 guidelines, not specific instructions or steps for  
3 individual officers. Now, when you wrote that, had you read  
4 87-14?

5 A. I had not, no, ma'am.

6 Q. Okay. So now that you've read 87-14, you would  
7 modify that?

8 A. Yes. I would say that 87-14 mandates for...  
9 requires for police supervisors to read... to understand the  
10 history of the officers, you know. Yeah, I would say that.  
11 And I would still keep the statement that general orders in  
12 general are meant to guide and provide guidance.

13 Q. Okay. I'd like to look at where you discussed the  
14 responsibility of Edwin Rivera Merced.

15 A. Okay. Towards the end of the report?

16 Q. Yeah, on page 18, I believe.

17 A. Okay.

18 Q. All right. You say that he was unaware of the 60-  
19 day suspension. I mean, you were quoting Mr. Reiter saying  
20 he was unaware of the 60-day suspension. Do you agree that  
21 that's what the evidence shows?

22 A. That's what Mr. Reiter cited.

23 Q. But you don't... In the original evidence you  
24 didn't see that?

25 A. I'm sorry, ma'am?

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

321

1 Q. You didn't see that in the evidence, that he  
2 testified that he was unaware of the 60-day suspension?

3 A. I believe that I... I believe that I may have. I  
4 don't recall offhand if I did or did not.

5 REPORTER: One moment. I'm sorry.

6 MS. BERKAN: We're waiting for a tape change.

7 DEPONENT: Okay.

8 [PAUSE FOR CHANGE OF AUDIO TAPES]

9 Q. Okay, and are you... Let me ask you a general  
10 question before I go into the specifics here. Are you  
11 concerned at all about the eight-year lag time between the  
12 event and the imposition of punishment in a case where  
13 serious charges were found to be substantiated?

14 A. Yeah, we had discussed that, you and I, on the  
15 12<sup>th</sup> and you asked me about whether or not this was within  
16 the best practices model. And I... my response is still the  
17 same, which is that it's not. It is not within the best  
18 practices model to, you know, to wait eight years to be  
19 disciplined for an action that an officer committed.

20 Q. Okay. And do you know how frequently that happens  
21 in Puerto Rico?

22 A. I think... I think what you told me, when you  
23 asked me that question, was that I should go to Puerto Rico  
24 and find out.

25 Q. [LAUGH] I appreciate...

1           A.    But I am not aware, ma'am, of how long it takes  
2   over there to do this. But, from what I understood and from  
3   what I inferred from Superintendent Toledo's testimony was  
4   that this was something that was... that they had actually  
5   created this whole, you know, Auxiliary Superintendent  
6   position in order to alleviate what was described as a large  
7   volume of complaints that were filed.

8           Q.    Do you know when the Auxiliary Superintendency was  
9   created?

10          A.    Ma'am?

11          Q.    Do you know when it was created?

12          A.    I... You know, Ms. Berkan, I know that I saw... I  
13   may have seen the date on that, but I don't recall off hand.

14          Q.    Okay. Do you believe that... Let's talk about  
15   statistics. Are you aware of the fact that no statistics  
16   regarding officer-involved shootings as an entity by itself  
17   have been produced in the course of the discovery in this  
18   case?

19               MR. McCALL: Objection to the form of the question  
20   and what's meant by officer-involved shooting, since  
21   statistics have been produced. If you can define what  
22   you mean by it.

23               MS. BERKAN: Statistics have been produced where  
24   the officer-involved shootings are subsumed into other  
25   statistics and do not separate out officer-involved

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

323

1           shootings. Now, as to what officer-involved shootings  
2           mean, they are shootings when officers shoot. Is that  
3           understood?

4           MR. McCALL: It has been produced. It had officer-  
5           involved shootings contained within them by your  
6           admission. Correct, Ms. Berkan?

7           MS. BERKAN: I don't know because they do not  
8           directly state whether officer-involved shootings are  
9           involved or not. You... I am going to ask your expert  
10          to assume that after many efforts the Police Department  
11          has not produced any statistics that specifically  
12          demonstrate the number of officer-involved shootings,  
13          the nature of officer-involved shootings, whether the  
14          officer took out his gun (such as was analyzed in  
15          Arlington), whether he actually shot, whether he was  
16          shot at, whether someone was injured, whether someone  
17          was fatally insured.

18 MS. BERKAN CONTINUES:

19          Q.    Would you assume that as a hypothetical, mister...  
20          Dr. del Carmen.

21          A.    Okay, I... I'm not going to ask you to repeat the  
22          entire...

23          MS. BERKAN: [LAUGH] Thank you.

24          A.    But I'm going to ask you to say... Do you mean  
25          that the statistics are not kept, right?

1           Q.    They're not kept which single out officer-involved  
2   shootings. They may be subsumed under an excessive force  
3   complaint. They may be subsumed under analysis of crime  
4   statistics, if the officer was charged. But there's no  
5   specific statistics kept as to officer-involved shootings.  
6   Assume that to be the case.

7           A.    Okay.

8           Q.    All right? Would that be consistent with best  
9   practices, to not keep those statistics?

10          A.    No, it would not be.

11          Q.    Thank you. Would you expect... No, strike that. I  
12   know I asked you in the last deposition as to whether or not  
13   you were aware of the shooting of Nelson Santiago, a young  
14   son of a police officer who died one week earlier. And I ask  
15   you now, would you expect Edwin Rivera Merced as Area  
16   Commander, to know who was —among his five or six hundred  
17   officers— who was present either at the time of shooting or  
18   immediately thereafter?

19          A.    Typically, in a police... you know, in the police  
20   world, I should say, you know, when there is an area  
21   commander, you know, overseeing so many people and so many  
22   individuals, you know, that individual is, you know,  
23   notified of the event. Typically they're not given that  
24   level of detail relevant to every officer that was involved  
25   and what the... you know... Now, did he have access to it?

1 Sure. Could he have seen it if he wanted to? Sure. But,  
2 typically, police commanders, police supervisors, they're  
3 not briefed, you know, with that level of detail that would  
4 depict as to who was there and who was not there.

5 Q. Would someone in the supervisory structure try,  
6 under the best practices model, to find out what officers  
7 were present either at the actual moment of the shooting or  
8 within seconds thereafter?

9 A. Typically, in... within the best practices model,  
10 the immediate supervisor, you know, or the individual that,  
11 you know, that took over the crime scene, the person who  
12 is... whose jurisdiction was affected by that type of  
13 shooting would be made aware of, you know, of the  
14 particulars of that incident. That typically happens in  
15 the... you know, if you want to call it the police world,  
16 that typically happens at the level of a sergeant, you know,  
17 perhaps a lieutenant. But, typically, a sergeant would be  
18 made aware of, you know, the specifics regarding a police  
19 shooting, yes, ma'am.

20 Q. And for what purpose would he or she be made  
21 aware?

22 A. Typically, to make sure that the subordinate or  
23 the individual officer that responded to the scene follow  
24 the protocol of what to do, how to, you know... you know,  
25 preserve the evidence, you know, if there was any liability

1 or any type of issues that came up on behalf of the  
2 officers, you know, where that was being assigned to. So  
3 it's a matter of just oversight, to make sure that the  
4 police department is doing its job.

5 Q. Would there be any other follow-up with respect to  
6 those officers who had observed a shooting that resulted in  
7 a death under the best practices model?

8 A. If the officers had a direct involvement in the  
9 shooting, absolutely. If the officers witnessed the  
10 shooting, sure. But if the officers were... you know,  
11 responded to the scene as a secondary or tertiary unit, in  
12 other words, they're not the primary unit that responded to  
13 the scene; they're not the ones processing the crime scene;  
14 they're not the ones that are directly responsible for that,  
15 typically, you know, there are some... there may be some  
16 questions that may be given to them. But typically those  
17 individuals are not... they're not there to provide any  
18 evidence or any insights into the occurrence of what  
19 happened, so they're not of the main concern of the  
20 investigatory unit.

21 Q. All right. But when you say secondary, tertiary,  
22 you're not referring to the officers who are the first  
23 officers on the scene immediately after the shooting?

24 A. Right. If the... if the... If the officers that  
25 responded to the incident, which I would coin that to be the



1 primary unit that responds to the incident, they would be  
2 the ones that would be responsible for, you know, processing  
3 the unit, you know uh... you know, being able to provide  
4 information to the detectives as to what happened. You know,  
5 in the United States these individuals would also be  
6 responsible for writing on a piece of paper, you know, the  
7 report, you know, the details of what happened, the names of  
8 the witnesses that were present and various other pieces of  
9 information.

10 Q. Do you know that the Tactical Operations Unit of  
11 Humacao was assigned to the very same Youth Festival where  
12 Nelson Santiago was killed?

13 A. No, ma'am, I was not aware of that.

14 Q. Are you aware that Mr. Pagán and Mr. Sustache  
15 arrived on the scene within seconds of the shooting and that  
16 members of their unit actually occupied the gun?

17 A. I believe you told me, you presented to me at the  
18 last deposition on the 12<sup>th</sup> you mentioned to me that this  
19 had been the case, that officer Pagán and Sustache had  
20 responded to that particular incident. If I recall  
21 correctly, that was...

22 Q. Are you aware of the fact that Mr. Pagán and Abdel  
23 Morales had previously worked together?

24 A. I'm sorry, and who else?

25 Q. I'm sorry. Abdel Morales was the shooter.

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

328

1 A. No, ma'am, I was not.

2 Q. All right. Are you aware that they had a personal  
3 relationship, friendship?

4 A. I was not aware of that.

5 MR. McCALL: Objection. Go ahead, you can answer.

6 DEPONENT: I'm sorry, Mr. McCall.

7 MR. McCALL: No, it's find. Go ahead, Ms. Berkan.

8 MS. BERKAN CONTINUES:

9 Q. Now, you do indicate, in discussing Victor Cruz  
10 and Colón Báez... Well, actually, let me go back to Rafael  
11 Figueroa Solís. You mention that he was on vacation during  
12 the incident. Correct?

13 A. Yes, ma'am.

14 Q. If he had supervisory responsibilities up to  
15 approximately one month before the incident, would that have  
16 any relevance whatsoever as to whether or not he complied  
17 with those supervisory responsibilities?

18 A. Okay, you're asking me...

19 MR. McCALL: Objection to the form of the question  
20 and what supervisory responsibilities you're referring  
21 to and what time period.

22 MS. BERKAN: That he headed the unit where Mr.  
23 Pagán was assigned up to about four weeks before the...  
24 I mean, he was still heading the unit at the time of  
25 the event, but was on vacation for the last four weeks.

1 MR. McCALL: Not the unit that took place the night  
2 of the shooting. So, are you interested in what...

3 MS. BERKAN: I'm sorry...

4 MR. McCALL: ...happened the night of the shooting  
5 or...

6 MS. BERKAN: ...it's the Tactical Operations Unit.

7 MR. McCALL: ...a month before?

8 MS. BERKAN: I'm sorry, sir. Let me ask this  
9 question.

10 MS. BERKAN CONTINUES:

11 Q. Dr. del Carmen, you would agree with me, would you  
12 not that supervisory responsibility in this case does not  
13 depend only on what happened on the night of August 11<sup>th</sup>?

14 A. Supervisory responsibility as a whole, Ms. Berkan,  
15 is obviously within the timeframe that that supervisor had a  
16 role as the supervisor of that individual.

17 Q. Correct. So if... if there were specific --and this  
18 is a hypothetical-- if 'X' of the defendants had specific  
19 supervisory responsibilities in the months leading up to  
20 August 11<sup>th</sup> but were off duty that night, could they still  
21 be found to have failed in their supervisory  
22 responsibilities with respect to officer Pagán?

23 A. The failure... When you say failure, do you mean  
24 that they failed to supervise as per what, the general  
25 orders, the... the...

1 Q. Well, I mean...

2 A. ...the best practices model? What are you asking  
3 me?

4 Q. We can go with best practices if you want, but I'm  
5 not giving you specifics of those failures. What I'm trying  
6 to establish is, and correct me if I'm wrong, that when you  
7 looked at supervisory responsibility in this case, you  
8 weren't looking only at what happened on August 11<sup>th</sup> and who  
9 was on duty, were you?

10 A. Let me answer both questions. [LAUGH] The  
11 supervisory responsibility of the individuals that oversaw  
12 officer Pagán had to do with their diligence, with their  
13 professionalism within the best practices model during the  
14 time that they supervised officer Pagán.

15 Q. Right. And that would be the equivalent of what  
16 you found, I mean in... conceptually, when you looked at the  
17 situation with officer Lynch in the Good case, you were  
18 looking at signs, red flags, disciplinary failures which you  
19 believed resulted in the later lack of professional  
20 activity... lack of professionalism in his, in that case,  
21 management of a criminal investigation.

22 A. I believe that in that particular case all of  
23 those elements that you mention were causal to the actual  
24 wrongful conviction of an individual for a number of years.  
25 When the supervisor had produced an exhibit or a... (strike

1 that, not an exhibit) ...a series of pictures that were used  
2 to identify the suspect and had darkened the picture where  
3 the suspect had been illustrated, to be suggestive to the  
4 witness or to the victim that that was the person that they  
5 wanted to incarcerate. There were issues relevant to a  
6 camera that was not used...

7 Q. I know, but I'm asking about the supervisory  
8 failings...

9 MR. McCALL: The question... He hasn't finished  
10 answering the question, Ms. Berkan. You put a question  
11 on and he's entitled...

12 MS. BERKAN: I'm asking about the supervisor. I  
13 have the right to ask that he answer the question. I  
14 understand that he's trying to be complete, but I'm not  
15 interested in the camera, I'm not interested in the  
16 photo spread. What I'm interested in is the predictors  
17 that...

18 MR. McCALL: Well, he's trying to answer the  
19 question. You're trying to make an analogy from another  
20 case and he's giving you the facts as to why it is or  
21 is not analogous. I think he has a right to answer the  
22 question you asked.

23 MS. BERKAN CONTINUES:

24 Q. Do you believe it was not analogous, Dr. del  
25 Carmen?

1 MR. McCALL: And he has the right to finish his  
2 answer.

3 Q. Do you believe it was not analogous?

4 A. Ms. Berkan, I believe that every case is very  
5 different from the other. And in this particular case that  
6 you mentioned, I believe that the individual supervisor  
7 basically allowed for these direct causal matters that  
8 related to the wrongful conviction of a man to take place.

9 Q. All right, very good.

10 A. So, I... in my mind it is very different from a  
11 police supervisor that may be in fact... failed to engage in  
12 the best practices model but does not directly cause the  
13 death of another human being.

14 Q. All right. Do you believe that Victor Cruz and  
15 Colón Báez followed best practices when they did not  
16 separate Zulma Díaz and Carlos Sustache?

17 MR. McCALL: Objection to the form of the question.  
18 It's assuming facts that you haven't put in evidence.  
19 If you want to ask as a hypothetical and ask his  
20 opinion, I won't object.

21 MS. BERKAN CONTINUES:

22 Q. Assume that every piece of evidence that has been  
23 presented in this case demonstrates that sergeant Colón Báez  
24 and Victor Cruz did not order Sustache and Ms. Díaz to be  
25 separated. Would that be consistent with best practices?

1           A.    I believe that if the role of the supervisors at  
2   the time of the incident would have been to investigate the  
3   actual incident that took place, you're right, it would not  
4   be best practices. However, if the role that they had at the  
5   time of the incident was not relevant to the incident,  
6   meaning that their supervisory role they were either off or  
7   they were not assigned to that particular unit or they were  
8   not assigned to that particular officer, I think in those  
9   particular cases in most police departments throughout the  
10  United States they would not be expected to even have a role  
11  in the crime scene, because it's being processed and it's  
12  being handled by other people.

13           Q.    And who was present at Reiter Hospital when Zulma  
14  Díaz and Carlos Sustache was there? Who was present from the  
15  Police Force? What supervisors were present?

16           A.    If my memory serves me well, I believe that one of  
17  the lieutenants showed up at the hospital.

18           Q.    And he was on when he showed up, wasn't he?

19           A.    Ma'am?

20           Q.    He was on when he showed up?

21           MR. McCALL: Objection to "on", as to what you mean  
22  as...

23           MS. BERKAN: He used the word "on". I'm using his  
24  word, Mr. McCall.

25           MR. McCALL: [UNINTELLIGIBLE] these individual

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

334

1 defendants or not? I object to the form of the question  
2 without that specification. It goes [UNINTELLIGIBLE]...

3 MS. BERKAN: I assume that...

4 MR. McCALL: ...to the supervisor at that point  
5 over them as members of the impact unit.

6 MS. BERKAN CONTINUES:

7 Q. Would you agree with Mr. McCall's testimony that  
8 once Mr. Pagán was assigned to the impact unit that his  
9 regular supervisor had no supervisory authority over him? Is  
10 that your understanding, Dr. del Carmen, in all honesty?

11 A. Ms. Berkan, at this point I'm utterly confused as  
12 to what exactly the point is here. But I will... But let me  
13 see if I can answer your question. Okay?

14 Q. I know, there's been a lot of interruption and I  
15 appreciate your being responsive to my answers.

16 A. [CHUCKLE] Well, let me... Let me go back a little  
17 bit and tell you. I... My understanding from the testimony  
18 that I read of Lieutenant Cruz was that Lieutenant Cruz  
19 actually re... you know, went to the hospital (and this was  
20 from his deposition that was taken back in March of this  
21 year) and that essentially that he was... that he showed up  
22 to the hospital and he saw officer Pagán, from what I  
23 remember, that he was on a stretcher. And he began to have a  
24 conversation with officer Pagán and that medical attention  
25 was being rendered. And I think he even described in his



1 deposition that there were some medical personnel present  
2 there and... I'm sorry, not only medical personnel but  
3 people that were part of Mr. Cáceres' family that were  
4 there.

5 Q. I'm sorry, sir, I was asking about Zulma Díaz and  
6 Sustache, not about Mr. Pagán.

7 A. I'm sorry. I'm sorry, I... I...

8 Q. I agree, I understand you're trying to answer my  
9 question, but there's been a lot of interruptions so it's  
10 hard. But I'm asking are you aware of the fact that Mr.  
11 Colón and Mr. Cruz were in the presence of Zulma Díaz and  
12 Carlos Sustache at Ryder Hospital?

13 A. Yes, ma'am. And I believe that he was within  
14 proximity of both of them, yes.

15 Q. And are you aware that they did not separate them,  
16 Mr. Sustache and Mr. Díaz... uh, Ms. Díaz?

17 A. From what I read in the testimony, I believe  
18 that's correct.

19 Q. And are you aware that several hours later Mr.  
20 Cruz and Mr. Colón Báez met with José Rivera, the Homicide  
21 detective and with a prosecutor?

22 MR. McCALL: Objection to the form. It assumes  
23 facts not in evidence. If you want to ask as a  
24 hypothetical.

25 MS. BERKAN: It's a hypothetical based on the

1 evidence.

2 MS. BERKAN CONTINUES:

3 Q. Are you aware, assuming that's a hypothetical, are  
4 you aware of it?

5 A. No, ma'am.

6 Q. Do you know if Victor Cruz was the highest  
7 supervisor on duty the night of the impact unit?

8 A. I believe that Lieutenant Rodríguez was also...  
9 was the actual supervisor and the one that responded...

10 Q. He was the actual...

11 A. ...but I believe that Mr. Cruz went ahead and  
12 reported what had happened via a telephone call to a  
13 supervisor.

14 Q. Wasn't it the fact that Mr. Cruz was the agent in  
15 charge of the Humacao Area that night because Edwin Rivera  
16 Merced was not on duty and that Mr. Rodríguez, Lieutenant  
17 Rodríguez was the supervisor of the impact unit alone?

18 A. I believe that's correct, Ms. Berkan.

19 Q. Assuming that's correct, you would agree with me  
20 that Mr. Cruz did have an indirect supervisory relationship  
21 to the... Pagán, Sustache and Díaz on the night of the 11<sup>th</sup>?

22 A. I believe that Mr. Cruz was not... on that  
23 particular night he was not the lieutenant in charge of what  
24 had occurred. So I don't know how we would coin the phrase  
25 or we would deem it to be indirect supervision. I'm not sure

1 what that...

2 Q. Who did Mr. Rodríguez, Lieutenant Rodríguez  
3 respond to that night?

4 A. I'm sorry?

5 Q. Who did Lieutenant Rodríguez in the impact unit  
6 respond to that night?

7 A. Who did he respond to?

8 Q. Yeah, who was his superior?

9 A. I... I... I don't recall that, ma'am.

10 Q. Do you agree that at the time of the event the  
11 person in charge of the Tactical Operations Unit in Humacao  
12 was Colón Báez?

13 A. Uh...

14 MR. McCALL: The time of what even?

15 MS. BERKAN: Oh, come on!

16 MR. McCALL: [UNINTELLIGIBLE]

17 MS. BERKAN: August 11<sup>th</sup>, 2007.

18 MR. McCALL: Okay.

19 DEPONENT: Okay, so you're asking me if Sergeant  
20 Colón Báez was responsible for or was in charge at that  
21 time. Is that what you're asking?

22 MS. BERKAN CONTINUES:

23 Q. Was he the head of the Tactical Operations Unit of  
24 Humacao on August 11, 20007?

25 MR. McCALL: As opposed to the impact unit.

1 A. Yes, yes, ma'am.

2 Q. Are you... At page 16 of your report...

3 A. Okay, ma'am.

4 Q. ...you indicate that Mr. Reiter's opinions "are  
5 baseless and for the most part not related to the shooting  
6 incident of August 11, 2007". Do you stand by that  
7 statement?

8 A. I'm sorry, let me get to that page.

9 Q. Okay, you spoke...

10 A. You said page 16 at the bottom?

11 Q. Yeah, at the bottom.

12 A. Okay. Let me read that real quick. "It is worth  
13 examining the allegations [UNINTELLIGIBLE] The inference  
14 made by Mr. Reiter's report upon each individual defendant  
15 while noting the fact that they are baseless and for the  
16 most part not related to the shooting incident of August 11,  
17 2007." What... Right. What I... what... what... What is  
18 depicted here and what I was thinking when I wrote this is  
19 that the point that he made about deliberate indifference on  
20 each one of the defendants they're not related to the  
21 incident on August the 11<sup>th</sup>, 2007 on a causal manner.

22 Q. Okay. Do you stand by this statement that they are  
23 "baseless"?

24 A. I stand by the statement that they are, yes,  
25 ma'am.

1 Q. Do you... say "for the most part not related". So  
2 some of them are related?

3 A. No, ma'am.

4 Q. None of them are related? None of those  
5 observations are related?

6 A. I don't believe that the observations that Mr.  
7 Reiter made in his report are related specifically on a  
8 causal effect model, you know, meaning that supervisors had  
9 a direct cause or caused the death of Cáceres on August the  
10 11<sup>th</sup>. I don't believe that.

11 Q. All right. And that's according to best practices,  
12 that's not a legal determination?

13 A. That is correct, ma'am, I'm not an attorney.

14 Q. Do you believe that failures in the setup of an  
15 administrative disciplinary file can lead to supervisory  
16 responsibility of a Superintendent in Puerto Rico?

17 A. Okay, say that again, ma'am.

18 Q. Do you believe that failures in the manner in  
19 which a disciplinary model is set up and/or implemented can  
20 lead to, in appropriate circumstances, the responsibility of  
21 a police superintendent for events which occur in the field?

22 A. I'm not sure that I understand what you're asking,  
23 but...

24 Q. Well then, don't answer it.

25 A. [CHUCKLE] I don't know...

1 Q. Don't answer it if you're not... I don't want you  
2 to answer anything you're not clear on. Do you...

3 A. What I'm... If you're asking...

4 Q. Are you aware of the fact that police  
5 superintendents in Puerto Rico, including Mr. Toledo, have  
6 been found responsible for the failures in the disciplinary  
7 system in Puerto Rico?

8 MR. McCALL: Objection to the form. It assumes  
9 something in evidence. If you want to ask...

10 MS. BERKAN: Yes, it does. I've litigated those  
11 cases. I'm assuming those in evidence, yes. Your  
12 objection is noted.

13 MS. BERKAN CONTINUES:

14 Q. Are you aware of that, sir?

15 A. Okay, am I aware of... of... of Superintendent  
16 Toledo's failure, is that what you're saying, to institute a  
17 disciplinary process?

18 Q. As being elements in finding liability against  
19 police superintendents in Puerto Rico.

20 A. I am not, ma'am.

21 Q. Are you concerned at all about the fact that  
22 according... And correct me on the exact numbers, Professor  
23 del Carmen, I'm doing this from memory. You say there are  
24 approximately 15,000 officers and approximately 10,000  
25 complaints per year?

1           A.    Yes, ma'am, from what I read from Mr. Reiter's  
2   report, I believe that's right.

3           Q.    All right. So you'd say there's like one complaint  
4   for every one and a half officers more or less? [CHUCKLE]

5           A.    Either that or you have a group of them that are  
6   very active in complaints.

7           Q.    Do you know if there are any... [LAUGH] Sorry.  
8   Good point. Do you know if any analysis has ever been done  
9   to see if there is a group that are particularly active?

10          A.    I am not aware of that, ma'am, no.

11          Q.    Do you know if statistics keeping in Puerto Rico  
12   is such that that analysis could be done?

13          A.    If you're asking me from a researcher perspective,  
14   any analysis could be done any time, yes, ma'am. Now,  
15   whether or not they keep the data that would be useful for  
16   that analysis and, you know, and all that, but typically  
17   police departments keep a healthy level of data that could  
18   be used for analytical purposes.

19          Q.    Do you know if that's done in Puerto Rico?

20          A.    I do not know, ma'am. My recollection from what I  
21   read relevant to statistics is that there's a separate unit  
22   that handles the statistical, you know, I don't want to use  
23   the word analysis because I don't recall that specifically,  
24   but that serves as sort of a data bank for the Police  
25   Department.

1 Q. Do you know if the statistics department only  
2 keeps track of crime statistics and not officer-involved  
3 events?

4 A. I don't, I don't recall that, ma'am, and I don't  
5 know so I can't answer to that.

6 Q. In sheer numbers, is there any cause for concern  
7 with that rate of complaints? I mean, you indicated... Let  
8 me preface that.

9 A. Yeah.

10 Q. I asked you about Arlington. You said they're  
11 somewhere in the order of 550 officers and about 50  
12 complaints per year. So it's about one in ten. Again, with  
13 your clarification. It doesn't mean it's one in ten  
14 officers, you know, it could... I understand the statistical  
15 problems, but just in sheer numbers. Allen, you did some  
16 research on their statistics, no?

17 A. Yes, ma'am.

18 Q. And there's about a 120 officers?

19 A. Yes, ma'am, that's correct.

20 Q. And about how many complaints per year?

21 A. I'm sorry?

22 Q. About how many complaints per year?

23 A. For which one, for City of Allen?

24 Q. Allen, yeah.

25 A. I don't recall offhand, you know. But it's less



1    than 50. You know, it's probably around 20, and that's just  
2    a guesstimate on my part.

3           Q.    All right. So in Puerto Rico does the sheer number  
4    give you any cause for concern?

5           A.    Of 15,000 police officers, if in fact there are  
6    10,000 complaints filed each year on the average, that would  
7    be concerning, yes.

8           Q.    And what would be the concern?

9           A.    Of the large volume.

10          Q.    And what would that... What red flags would that  
11    raise, I know subject to further analysis?

12          A.    Well, you know, looking at it from an objectively  
13    statistical perspective, you have one of the conditions that  
14    are taking place. Either you have... Actually, one of three.  
15    Either you have a population that likes to complain a lot,  
16    which we know that geographically, you know, there are some  
17    cities that have particular neighborhoods, for instance,  
18    where people see just anything, a cat, you know, walking on  
19    the wrong side of the street, and they call 9-1-1 to report  
20    it. Or you may have the second, you know, possibility is  
21    that you may have police officers as a whole that are  
22    engaging in behavior that rises to the level of a complaint.  
23    Or, number three, you may have a small sample of people that  
24    are engaging in a great deal of activity that would give  
25    rise to complaints.

1 Q. Do you know if there have been any reviews or  
2 studies about the fact that people in Puerto Rico are  
3 fearful of complaining...

4 A. No, ma'am, I...

5 Q. ...and there tends to be underreporting? Have you  
6 seen any of those studies?

7 A. Well, I've seen studies of... of... I've actually  
8 done a few on fear of crime as a whole, where we actually  
9 measure, you know, the level of confidence that people have  
10 about the police department and how they perceive, you know,  
11 the police department response and how quickly it is and all  
12 that. I've done a few of those. I have not seen one specific  
13 to Puerto Rico.

14 MR. McCALL: Ms. Berkan, I just note that we're in  
15 excess of the hour. It's...

16 MS. BERKAN: We... Our previous deposition was five  
17 hours and 26 minutes.

18 MR. McCALL: Seven hours and 21 minutes, so...

19 MS. BERKAN: It was five hours and 26 minutes, our  
20 previous deposition. We have the exact times. One hour  
21 and 56; one hour and 25 and one hour and one.

22 MR. McCALL: 9:00 a.m. We were there till 4:15. We  
23 took less than an hour for lunch...

24 MS. BERKAN: We have...

25 MS. MÉNDEZ: It was... We have the exact times, Mr.

1           McCall. It went from 8:59...

2           MR. McCALL: An hour and 15 minutes.

3           MS. MÉNDEZ: ...to 10:55 a.m. Then we took a 13  
4           minute break. It went from 11:08 a.m. through 12:33.  
5           Then we came back on record at 1:52. At 2:53 we took a  
6           ten-minute break, and we were there until 4:15. It's  
7           five hours and 26 minutes.

8           MS. BERKAN: Okay, I'm going to continue.

9           Q.    Do you know how many incidents of police violence  
10          there were in 2007 in Puerto Rico?

11          A.    I'm sorry, say that again, Ms. Berkan.

12          Q.    Do you know how many incidents of police violence  
13          against citizens there were in 2007 in Puerto Rico?

14          A.    Not specifically, ma'am, no.

15          Q.    Do you know how many officer-involved shootings  
16          there were in Puerto Rico in 2007?

17          A.    I do not.

18          Q.    How about in the Humacao Area?

19          A.    No, ma'am, not specific to that.

20          Q.    Have you heard or have any reason to believe that  
21          Tactical Operations Division in Puerto Rico (and I'm now not  
22          referring specifically to Humacao, but in general the  
23          Tactical Operations Division) is viewed by the community as  
24          being particularly violent?

25          A.    No, ma'am, I do not.

1 Q. Do you know if there have been other cases of  
2 alleged police brutality in Puerto Rico?

3 A. Well, by Mr. Reiter's report, I heard that he had  
4 worked with you in previous cases that related to police  
5 management issues and police use of force issues as well.

6 Q. All right. But besides working with me, do you  
7 know of any other cases?

8 A. No, ma'am, not that I'm particularly aware of, no.

9 Q. In the Powers case that you worked on, there was  
10 an administrative shooting review team, is that correct?

11 A. Yes, ma'am. I believe you asked me that on the  
12 12<sup>th</sup>.

13 Q. Oh, I did ask you that? I'm going over some of my  
14 previous notes...

15 A. No, that's fine, that's fine. I'm just trying to  
16 recall whether or not I answered the question back then. So,  
17 yes.

18 MS. BERKAN: And Dr. del Carmen, let me tell you, I  
19 really appreciate your answers. I think they are quite  
20 straightforward.

21 DEPONENT: I'm trying, Ms. Berkan. [CHUCKLE] I'm  
22 running a...

23 MS. BERKAN: Yes, I know you...

24 DEPONENT: And I'm holding a jacket in front of me  
25 so that I don't pass out, but I'm trying to do the best

1           that I can.

2           MS. BERKAN: No, I really do appreciate it.

3           Q.    And did I ask you (I'm sorry, sir, I really don't  
4   remember) if the best practices model is written anywhere?

5           A.    No, Ms. Berkan. I think we talked a little bit  
6   about that last time, but I don't remember that you asked me  
7   that specifically. I... The best practices model is really a  
8   summation of articles and books and, you know, police, you  
9   know, directives that have been found over the years, you  
10   know. And we talked a little bit about the PERF, which is  
11   the Police Executive Research Forum.

12          Q.    Oh, yes, I do recall that, sir. You're absolutely  
13   right. But there's no single listing?

14          A.    That is correct, yeah. There's no, you know, one  
15   book that you can go to or directive or, you know, direct  
16   that would suggest that.

17          Q.    And the IACP model policies, do you look to them  
18   at all?

19          A.    Which model, ma'am?

20          Q.    The IACP.

21          A.    The IACP models are in fact relevant, yes, ma'am.

22          Q.    And relevant in what sense?

23          A.    Well, they establish guidelines and, you know, if  
24   you want to call it a template, you know, along with, you  
25   know, PERF and various other organizations that are, you

1 know, throughout the United States, they establish templates  
2 for police departments to follow and represent, you know,  
3 the best practices model.

4 Q. Okay. And PERF is Police Enforcement Research...

5 A. Police Executive Research Forum, P-E-R-F.

6 Q. Executive. And do they also come up with model  
7 policies?

8 A. I believe they do. They have a series of  
9 publications that they produce and they sell. They also have  
10 an annual conference where participants go to from all over  
11 the world, really. And they give them, you know, policies  
12 and procedures and they talk about best practices.

13 Q. Okay. And do you look to those PERF or IACP models  
14 when you... model policies when you're analyzing situations  
15 involving potential police responsibility or in your audits  
16 or in your consultation work?

17 A. Yeah, we... we... Most of my consulting work that  
18 I do with police agencies, even though it's very... you  
19 know, I've done, you know, different types of works for them  
20 but, you know, a lot of it doesn't relate specifically to  
21 whether or not they have the right policy. I think the  
22 only... the only difference... the only exception to that is  
23 those on racial profiling. And, typically, those agencies  
24 don't have those policies on that. But I do know that many  
25 police agencies throughout the United States look at the

1 policies as general guidelines and parameters in which  
2 they... they would adopt to put in place at the police  
3 department.

4 Q. And in your previous work in consulting -let's  
5 start with consulting- what work in consulting would you say  
6 is directly applicable to the matters that you discussed in  
7 your report with respect to the Cáceres shooting?

8 A. Well, I've actually... When I started doing the  
9 consulting work about 12 years ago, I started conducting  
10 seminars. In fact, that's what... that's how I started in  
11 consulting. Chief Concord at the time hired me to provide  
12 three or four seminars on... for sergeants and lieutenants  
13 on police supervisory roles. Now, we talked about the  
14 burning out process and about how to identify officers that  
15 were basically on the edge, you know. We looked at the  
16 communication aspect of policing and how it was... it was...  
17 how to effectively communicate with their supervisors and  
18 their subordinates as well. And that led me into doing some  
19 research for... and served really as an adviser for police  
20 departments on management issues.

21 I mentioned to you on the 12<sup>th</sup> that I had done some  
22 Cove seminars, which really goes hand in hand with police  
23 best practices relevant to police management. I've  
24 supervised I think something like ninety plus theses as a  
25 major professor since I've been at UTA where we've done some

1 work relevant to policing issues. As you saw from the  
2 syllabus that I sent you, I have also taught classes at the  
3 graduate level on policing issues where we talk also about  
4 management efforts. So I've done, you know, a little bit of  
5 everything in terms of training as well as analysis as well  
6 as seminars for practitioners and in the academic setting as  
7 well.

8 MS. BERKAN: All right, I have just about two more  
9 questions on that and then I'm pretty much done.

10 DEPONENT: Yes, ma'am.

11 Q. One is on that... You didn't bring me... You  
12 didn't send me anything on the Cove training, and I'm  
13 assuming because there was nothing that was not propriety.

14 A. Yeah, let me... I did send Mr. McCall like a one  
15 sheet of paper that had information on the Cove seminar. But  
16 you were right, you know, that you told me that there may be  
17 some restrictions on that. I went back and I looked at the  
18 actual instructor's manual that I used and I'm not allowed  
19 to distribute it. But, just so you know for the record and  
20 for your privilege as well, the Cove seminars they have to  
21 do with the seven habits, you know, of highly effective  
22 people. And these seven habits have to do with basically how  
23 police supervisors, you know, should employ their daily  
24 lives and how they should be, you know, looking for  
25 positive, you know, you know, instruments within their



1 organizational structure. It's... Cove is made for  
2 management as a whole.

3 Q. It doesn't go specifically to how supervisors  
4 should identify potentially violent officers, correct?

5 A. It does not.

6 Q. And it does not go to how police departments  
7 should maintain disciplinary systems so that... and/or  
8 statistics keeping so that potentially violent behavior is  
9 identified and remedied?

10 A. That is correct, ma'am.

11 MS. BERKAN: And the court reporter has to change  
12 the tape. It always happens when I have like one  
13 question left.

14 [PAUSE FOR CHANGE OF AUDIO TAPES]

15 DEPONENT: Oh, okay, okay. Okay, say that again,  
16 Ms. Berkan, I missed it.

17 MS. BERKAN: No, no, the court reporter was  
18 changing the tape. [CHUCKLE]

19 DEPONENT: Oh, okay, okay.

20 MS. BERKAN: And your issues in policing... Mr.  
21 McCall, can you send us that one page.

22 MR. MCCALL: Yes, Ms. Berkan, I realized that  
23 evidently it was sent separate...

24 MS. BERKAN: Okay.

25 MR. MCCALL: ...from the other packets. When I sent

1 the stuff on Friday I didn't realize. I will...

2 MS. BERKAN: All right, no problem.

3 MR. McCALL: ...send that.

4 DEPONENT: And I'm sorry about that, I didn't...

5 MS. BERKAN: No problem. No, no problem.

6 MS. BERKAN CONTINUES:

7 Q. The issues in policy syllabus that you gave to us  
8 doesn't go directly to the issue of identifying violent  
9 officers, does it?

10 A. No, ma'am.

11 Q. All right. Have you ever taught any seminars which  
12 go directly to the issue of identifying violent officers  
13 and/or statistical analysis for that purpose?

14 A. Not seminars, ma'am. I haven't instructed any on  
15 that topic.

16 Q. Have you done consulting on that topic?

17 A. I believe the police department in the past, and  
18 I'm often given data sets by police supervisors that relate  
19 to whether or not police officers are engaging in, you know,  
20 either excessive use of force or have disciplinary concerns  
21 relevant to racial profiling. So in that sense I have  
22 reviewed data sets, yes, ma'am.

23 Q. And what are those data sets? What does that mean?

24 A. Typically, what it is is like in the case of a  
25 racial profiling incident...

1 Q. No, not racial profiling, excessive force.

2 A. Well, it would be in the context of having a  
3 police officer that's had a series or a large volume of  
4 complaints that were filed against him or her on use for  
5 force and we look at the nature of the complaints, what the  
6 outcome of the stop was or the use of force was. I did a...  
7 I did a... I consulted without charging them anything, but I  
8 consulted as part of my service that the university requires  
9 us to do with the Austin Statesman, which is a newspaper out  
10 of Austin, a number of years back when they ran several  
11 articles on use of force for the Austin Police Department  
12 and we reviewed the data that they had used related to use  
13 of force against minorities, particularly African-Americans  
14 and Hispanics.

15 Q. Yes, I've seen the newspaper reports of that. But  
16 there was data to analyze, correct?

17 A. Yes, ma'am, that's correct.

18 Q. And that data was generated because of the racial  
19 profiling law in Texas?

20 A. I don't know that... No, no, no. The data...

21 Q. No?

22 A. The data on racial profiling, yes, ma'am, that's  
23 correct. But the data on use of force, no, it's independent  
24 of that.

25 Q. Austin has its own data collection on use of

1 force?

2 A. Yes, ma'am, I believe so.

3 Q. And does that serve any purpose?

4 A. Yes, ma'am, it allows for their internal practices  
5 to be able to highlight if there are concerns relevant to  
6 use of force.

7 Q. And it would also highlight particular units that  
8 might have issues?

9 A. Yes, ma'am.

10 Q. Did you in your... in the course of your graduate  
11 work... I mean, not graduate work, your supervision of  
12 graduate students, have you supervised any theses directly  
13 related to disciplinary systems within police agencies?

14 A. We did... We've done a few. And, again, I'm going  
15 straight by my recollection, but I believe we've done a few  
16 studies that related to issues that were relevant to  
17 management issues. For instance, you know, we did a use of  
18 force perception study that was done on police officers. We  
19 did a minority police officers in the United States,  
20 particularly females, and measured tokenism there. Which all  
21 of these related, you know, one way or another to  
22 management, management of these individuals and police work.

23 Q. Any that had to do specifically with the use of  
24 data collection for the purpose of analyzing use of force?

25 A. No, ma'am, I've never done an inventory of police

1 departments that re... you know, that have or have not done  
2 any use of force data collection mechanisms.

3 Q. Or in your supervision of graduate students?

4 A. Right. That's correct.

5 Q. All right. Or how about management issues related  
6 to identifying those officers who may have violent  
7 tendencies?

8 A. Yes, Ms. Berkan, that's right.

9 Q. Have you done any consultation that directly goes  
10 to those issues about identification of officers with  
11 violent tendencies?

12 A. I've done some work, like we discussed on the  
13 12<sup>th</sup>. I worked with the Arlington Police Department, you  
14 know, at the time with Deputy Chief Collin on obtaining a  
15 grant that would allow them to have an early warning system  
16 that would help them identify police officers that were...  
17 had issues. And I helped them create the parameters that  
18 they had in place for that purpose. It included, obviously,  
19 people that would have violent tendencies but not specific  
20 to that, right.

21 Q. Okay. Early warning system, can you define that?

22 A. Yes, ma'am, it's the software that some police  
23 departments have in place in order to allow them to identify  
24 problematic officers.

25 Q. Uh-huh, yeah, I think we actually addressed that

1 in the last deposition.

2 A. Yes, ma'am.

3 Q. Now and do you know if that software is in use in  
4 Puerto Rico?

5 A. I do not, ma'am.

6 Q. In your supervision of graduate studies do you...  
7 I mean your graduate students who are doing their theses,  
8 and you're I assume a theses advisor, have you supervised  
9 any theses regarding early warning systems or identification  
10 of officers with violent tendencies?

11 A. No, ma'am, not any theses.

12 Q. Now, I believe I asked you last time, but I want  
13 to me 100% sure. Did I ask you if you know of the commission  
14 that was named by Pedro Toledo in 2007?

15 A. I don't recall, Ms. Berkan.

16 Q. You don't know about it or you haven't...

17 A. I do you recall you asked me and I don't know  
18 about it. [CHUCKLE]

19 MS. BERKAN: All right, all right. Let me just  
20 review my notes a second. I think I'm done and I really  
21 appreciate it. I hope this hasn't been too burdensome  
22 for you, mister... Professor del Carmen.

23 DEPONENT: Well, and I thank you Ms. Berkan, for  
24 your accommodating me as well.

25 [PAUSE]

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

357

1 MS. BERKAN: I believe that's it, sir.

2 DEPONENT: Thank you so much, Ms. Berkan.

3 MS. BERKAN: Thank you. Have a good day.

4 DEPONENT: Thank you.

5 [THE PROCEEDINGS WERE CONCLUDED AT 10:33 A.M.]

6 \* \* \* \*

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**CERTIFICATION OF TRANSCRIPT**

I, NELLY RIVERA-MARRERO, do hereby

CERTIFY: That the foregoing transcript was prepared from a tape recording made by me via telephone and is a true and correct transcription of the same.

I FURTHER CERTIFY that I have no interest whatsoever in the outcome of the captioned case.

In San Juan, Puerto Rico, this 27<sup>th</sup> day of September, 2010.

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Nelly Rivera-Marrero



- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

359

**DEPONENT'S CERTIFICATION**

I HEREBY CERTIFY that I have read the foregoing transcript of the continuation of my deposition testimony and that

\_\_\_ I have no objections.

\_\_\_ I have the objections set forth below.

In San Juan, Puerto Rico, this            day of            ,  
2010.

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ALEJANDRO DEL CARMEN



- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

**361**

**O B J E C T I O N S**

Pages

By Mr. McCall:

Form of the question

309|310|322|328|  
332|333|335|340

Deponent has not finished  
his answer

331

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

362

**REQUESTS FOR PRODUCTION OF INFORMATION AND/OR DOCUMENTS**

|   | <u>Page</u> |
|---|-------------|
| 1. Documentation reflecting time spent by deponent reviewing documents in this case | 299         |
| 2. One-page document on issues in policing  | 351         |

- CONTINUATION OF DEPOSITION OF ALEJANDRO DEL CARMEN, Ph.D. -

363

**E X H I B I T S**

Pages

Exhibit 7 - Deponent's time sheet for  
deposition preparation;  
letter from Joseph (Sib)  
Abraham of June 30, 2010;  
Del Carmen Consulting web  
page; letter of July 7,  
2010 to Joseph(Sib) Abraham;  
course description for  
CRCJ 5319 Issues in Policing  
course for Spring 2010;  
Doctoral diploma of Alejandro  
del Carmen

292